Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-2024

URBATEC, a California corporation,

Petitioner,

vs.

YUMA COUNTY, an Arizona County,

Respondent.

SUPPLEMENTAL APPENDIX

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Attorney for Petitioner

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Jun 13 1120 AM '76

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

URBATEC, a California corporation,	
Plaintiff,	CIV. NO. 73-159 PHX (WEC)
v.	FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT
YUMA COUNTY, an Arizona County; D. H. TRIGG, F. A. DELAUGHTER, GORDON D. DONALDSON and WALTER R. JOHNSON,	
Defendants.	

This cause came on regularly for trial on May 25, 1976, before the Court, sitting without a jury, the Honorable Walter E. Craig, Judge presiding, Schuman, Novak & Cooper by and through Mark S. Novak and Lewis and Roca by and through Tom Karas appeared as counsel for Plaintiff, and David S. Ellsworth, Esquire, appeared as counsel for Defendants. The Court having heard the testimony and having examined the proof offered by the respective parties, and the cause having been submitted for decision, and the Court being fully advised in the premises makes its findings of fact as follows:

FINDINGS OF FACT

The Court finds that:

1. The Court has jurisdiction over the parties and the subject matter of this action.

2. Defendant County of Yuma, Arizona, ("County") is a political subdivision of the State of Arizona. (Pre-Trial Order, Agreed Fact No. 2.)

3. On May 2, 1955, the County duly created, as an agent of the County, an Authority known as The Housing Authority of the County of Yuma ("Authority") and delegated to it the power to construct, maintain, operate and manage any housing project of County and to exercise all other powers conferred on Yuma County, Arizona by the Municipal Housing Law and Chapter 46, Session Laws of 1943, Regular Session, approved March 18, 1943, with the exception of powers to borrow money, issue bonds, and acquire real property. (Plaintiff's Exhibit 1.)

4. On April 27, 1972, the City of Yuma passed its Resolution No. 1712 recognizing a shortage of housing for low-income people in Yuma and soliciting the Department of Housing and Urban Development, United States Government, ("HUD") to provide every assistance available "on behalf of the request for said urgently needed housing by the Yuma County Housing Authority." (Plaintiff's Exhibit 2.)

5. On May 1, 1972, the Board of Supervisors of County duly passed its resolution providing, among other things,

(a) That there is a need for low-rent housing to meet needs not adequately met by private enterprise.

(b) That the Executive Director of the Housing Authority shall cause to be prepared and shall sign and send to the Secretary of Housing and Urban Development an application for financial assistance for 120 dwelling units of low-rent public housing to be provided by new

construction by the Turnkey method and for a preliminary loan in the amount of $48,000.

(c) That in connection with the development and operation of any program or activity receiving federal financial assistance, the Housing Authority of the County of Yuma will comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 and the regulations and requirements of the Department of Housing and Urban Development ("HUD"). (Plaintiff's Exhibit 3).

6. On May 1, 1972 the County duly passed a second resolution providing, among other things, that County would enter into one or more contracts with HUD for loans and annual contributions in connection with the development and administration of low-rent housing, and providing that the County "acting by and through the Authority shall endeavor (a) to secure a contract or contracts with the Government for loans and annual contributions covering one or more projects comprising approximately 400 units of low-rent housing and (b) to develop and administer such project or projects, each of which shall be located within the County." (Plaintiff's Exhibit 4).

7. Said 120-unit low-rent Turnkey Project became known as Yuma 13-3 ("The Project").

8. Thereafter and on May 2, 1972 the Authority advertised its invitation and sent invitations to developers for proposals for the construction of 120 units pursuant to the HUD Turnkey regulations. (Pre-Trial Order Agreed Fact No. 7).

9. Five companies including Plaintiff, submitted proposals to the Authority on or before May 30, 1972. (Plaintiff's

Exhibit 6).

10. On May 31, 1972, the Authority, after considerable discussion of cost, design and criteria as specified by HUD, duly selected Plaintiff Urbatec, a California corporation, as the developer and approved its proposal. (Plaintiff's Exhibit 6; Pre-Trial Order, Agreed Fact No. 1).

11. The Chairman of the County's Board of Supervisors and one member of the Board of Supervisors, Glenn Strohm and Ramon Avila, respectively, were present at the Authority's May 31, 1972 meeting when Urbatec's proposal was accepted. (Plaintiff's Exhibit 6).

12. Urbatec's proposal consisted of the following elements:

(a) 93 of the units were to be placed on two sites at Virginia Drive and 27th Street on land already zoned for multi-family development and for density as proposed in the Urbatec proposal, and 27 of the units were to be placed at a site at 12th Avenue and 22nd Street where re-zoning by the City of Yuma for the proposed use would be required. (Plaintiff's Exhibit 5A).

(b) The total cost for the completed Urbatec project would be $2,612,450 consisting of land costs at $190,000; site improvements at $235,000; dwelling construction at $1,727,400; dwelling equipment at $42,000; non-dwelling construction at $120,900; non-dwelling equipment at $2,900; architectural and engineering services at $29,250; taxes, interim financing and closing costs at $125,000; site acquisition costs at $25,000; and developer's fee and overhead at $75,000. (Plaintiff's Exhibit 5).

13. After May 31, 1972, HUD reviewed

and evaluated the five proposals received by the Authority, and on June 5, 1972, HUD sent its letter to the Authority concurring in the Authority's selection of Urbatec's proposal at the price of $2,612,450 subject to the following conditions:

(a) The total cost of the sites alone shall not exceed the appraised value of each parcel, and

(b) The cost of the improvements (excluding land) shall not exceed the mid-point of the two independent cost estimates. (Plaintiff's Exhibit 8).

14. In 1972 Urbatec was a specialist in the design, development and construction of federally subsidized housing projects.

15. On June 12, 1972 the Authority informed the Board of Supervisors of County by letter of HUD's concurrence in the recommendation of the Authority in the selection of the proposal submitted by Urbatec, subject to the following conditions:

The total cost of the sites alone shall not exceed the appraised value of each parcel and the cost of the improvements (excluding land) shall not exceed the midpoint of two independent cost estimates. (Plaintiff's Exhibit 10).

16. The Authority's letter of June 12, 1972 further informed the Board of Supervisors of the specific sites proposed for the project and of the existing zoning for such sites. (Plaintiff's Exhibit 10).

17. On or about June 12, 1972 the County, through its Board of Supervisors, knew of Urbatec's selection, the sites for the project and the proposed cost thereof subject to HUD approval of land

and improvements cost. (Plaintiff's Exhibit 10).

18. The Authority's said letter of June 12, 1972 enclosed a Cooperation Agreement in connection with the low-rent Turnkey project to be adopted by the County of Yuma and the City of Yuma. (Plainfiff's Exhibit 10).

19. On June 21, 1972 the Board of Supervisors duly resolved that said Cooperation Agreement proposed for the County and City of Yuma, Arizona, was approved both as to form and substance. (Plaintiff's Exhibit 11).

20. Glenn H. Strohm, executed said Cooperation Agreement as Chairman of the Board of Supervisors of the County of Yuma on behalf of said Board of Supervisors on June 21, 1972. (Plaintiff's Exhibit 12).

21. The Cooperation Agreement provided, among other things, the County of Yuma shall endeavor to secure a contract or contracts with HUD for loans and annual contributions covering one or more projects comprising 200 units of low-rent housing. (Plaintiff's Exhibit 12).

22. On June 14, 1972 the Authority forwarded to Urbatec its letter approving Urbatec's Turnkey proposal for 120 dwelling units and related apurtenances upon the site situated at 27th and Madison Avenue, 27th and Virginia Drive, 12th Avenue and 23rd Street, Yuma, Arizona. Said letter of approval invited Urbatec to a Feasibility Conference at HUD in Los Angeles to:

(1) Negotiate the purchase price of the land.

(2) Discuss design and HUD requirements, and

(3) Schedule the remaining stages of the Turnkey program.

Said letter further stated: "If the drawings, specifications, and price are satisfactory, they will be submitted to the government with a request for an annual contributions contract under which the acquisition of the property will be financed. The Authority will promptly execute such contract when it is tendered by the government.

"Promptly upon the execution of an annual contributions contract between the government and the Authority the Authority will issue to you a firm Letter of Intent setting forth the conditions under which you will prepare working drawings and specifications and under which you and the Authority will enter into a Contract of sale of the property." (Plaintiff's Exhibit 9).

23. Said approval letter of June 14, 1972 further provided: "In consideration of the agreement of the Authority to take the actions set forth above, and with the knowledge that this letter is issued in reliance upon the developer's statement of disclosure of interest filed with your proposal, your acceptance hereof is your certification and agreement that there has not been any assignment, sale, or any other form of transfer of the property, or an interest therein or of any contract which may result herefrom, and that no such assignment, sale, or transfer will be made without the prior written consent of the Authority and the government. . . If this letter represents your understanding, please sign and return for copies." (Plaintiff's Exhibit 9).

24. Urbatec executed said letter of June 14, 1972 where the developer's

signature blank was provided therefor under the word "Accepted:" on June 22, 1972. (Plaintiff's Exhibit 9).

25. The approval letter of June 14, 1972 was written and executed by Charlene Maloney as Executive Director of the Housing Authority of the County of Yuma.

26. The approval letter was written pursuant to HUD's instructions by its letter of June 5, 1972 to the Authority (Plaintiff's Exhibit 8) and was taken from Appendix 4 of HUD's Circular RHA 7420.1. (Plaintiff's Exhibit 5A).

27. Charlene Maloney's use of the word "Authority" in said approval letter referred to the County of Yuma through its Board of Supervisors, but Charlene Maloney used the words "The Authority" in that those were the exact words used in said Appendix 4.

28. Charlene Maloney believed and understood she had the legal authority to execute said approval letter of June 12, 1972 to Urbatec and in fact had such legal authority in that the Board of Supervisors of the County of Yuma on May 1, 1972, had passed that certain RESOLUTION RELATING TO LOW-RENT HOUSING PROJECTS PROPOSED TO BE DEVELOPED IN THE COUNTY OF YUMA; APPROVING APPLICATION FOR A PRELIMINARY LOAN; DECLARING THE INTENTION OF THE COUNTY OF YUMA TO COOPERATE WITH THE UNITED STATES OF AMERICA ACTING THROUGH THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT IN THE DEVELOPMENT OF AND OPERATIONS OF THE PROJECTS, which resolutions specifically set forth at Paragraph 2 thereof: "[The County of Yuma] acting by and through the local authority shall endeavor (a) to secure a contract or contracts with the Government for loans and annual

contributions covering one or more projects comprising approximately 400 units of low-rent housing and (b) to develop and administer such Project, or Projects, each of which shall be located within the County of Yuma." (Plaintiff's Exhibit 4).

29. It was the understanding of the Authority and Urbatec that the June 14, 1972 approval letter was subject to the following conditions: The approval of the purchase price of the land, HUD and the Authority's approval of project design and Urbatec's compliance with HUD requirements and the scheduling of the remaining stages of the Turnkey program.

30. The terms of the firm Letter of Intent and the Contract of Sale referred to in said approval letter of June 14, 1972, did not remain to be negotiated in that they were set forth verbatim in Appendices 10 and 12, respectively, of HUD Low-Rent Turnkey Handbook Circular RHA 7420.1 which regulated the Project. (Plaintiff's Exhibit 5A).

31. Said letter of June 14, 1972 (Plaintiff's Exhibit 9) constituted a contract between Plaintiff and Defendant County of Yuma.

32. From June 1, 1972 through on or about November 10, 1972, with the exception of a brief period in July, 1972, the Authority, HUD and Urbatec worked closely together and diligently to complete the planning and development of The Project and to comply with all requirements of the Authority and HUD as to costs, drawings, and specifications.

34. Urbatec, the Authority and HUD agreed on a schedule for the remaining stages of the Turnkey program on June 22, 1972. (Plaintiff's Exhibit 14).

34. On July 10, 1972 HUD informed the

Authority by letter that the acquisition prices of the three sites proposed for the Turnkey project by Urbatec were approved. (Plaintiff's Exhibit 10).

35. By October 24, 1972, HUD and the Authority had approved the project design and preliminary drawings after Urbatec complied with the Authority's and HUD's requirements expressed in conferences among HUD representatives, Authority representatives and Urbatec representatives on June 22, September 20 and September 21, 1972. (Plaintiff's Exhibits 6, 25, 28 and 29).

36. Urbatec fulfilled all the conditions required of it in the June 4, 1972 approval letter.

37. On or about July 12, 1972, certain persons in the City of Yuma raised objections to the construction of The Project on the sites selected by the Authority, the County and approved by HUD. (Plaintiff's Exhibit 16).

38. On August 31, 1972 the Authority forwarded to the Board of Supervisors of the County the proposed documentation required by HUD for the adoption of the annual contributions contract for the financing of the purchase of The Project. (Plaintiff's Exhibit 22).

39. On November 2, 1972 the Authority requested that Urbatec prepare final plans and specifications. (Plaintiff's Exhibit 30).

40. The County of Yuma is bound to its promises set forth in said approval letter of June 14, 1972, in that said promises reasonably could be expected to and did in fact induce action of a substantial and definite character by Urbatec, and injustice can be avoided in this case only by enforcement of the

County's said promises.

41. The Housing Authority of the County of Yuma did not intend to, and did not attempt to, exceed its legal authority in the development of The Project. D. H. Trigg, F. A. Delaughter, Gordon V. Donaldson and Walter R. Johnson, as Commissioners of the Housing Authority of the County of Yuma did not intend to, and did not attempt to, exceed their authority in the development of The Project.

42. Defendants D. H. Trigg, F. A. Delaughter, Gordon V. Donaldson and Walter R. Johnson were duly appointed members of the Housing Authority in November and December, 1972 and were residents of the County of Yuma, State of Arizona.

43. That Charlene Maloney, as Executive Director of the Housing Authority did not intend to, and did not attempt to, exceed her legal authority in the development of the proposed Turnkey project.

44. At all times relevant to the subject litigation, the Housing Authority of the County of Yuma was the duly authorized agent of the County for the construction, maintenance, operation and management of housing projects in Yuma County. (Plaintiff's Exhibit 1).

45. By virtue of the County's Resolutions of May 2, 1955 (Plaintiff's Exhibit 1) and May 1, 1972 (Plaintiff's Exhibit 4) the County duly authorized The Authority to do all things reasonable and necessary to secure from HUD a contract or contracts for loans and annual contributions for The Project and to develop and administer The Project.

46. The Authority and Charlene

Maloney, as its Executive Director, were acting within the scope of said agency and authority as to all the acts they performed to develop The Project from May 1, 1972 until November 8, 1972, (when The Authority resolved to cancel The Project) including but not limited to the following acts:

(a) Selecting Urbatec's proposal from among the five proposals submitted. (Plaintiff's Exhibit 6).

(b) Executing the June 14, 1972, approval letter to Urbatec. (Plaintiff's Exhibit 9).

(c) Coordinating the planning and development tasks on The Project to be performed by The Authority, the County, HUD and Urbatec.

(d) Participating in the approval of design factors and specifications with HUD throughout said period and at the conferences of June 22, September 20 and September 21, 1972. (Plaintiff's Exhibit 14 and 25).

(e) Instructing Urbatec on November 2, 1972, to prepare final plans and specifications for The Project. (Plaintiff's Exhibit 30).

(f) Forwarding to The County Board of Supervisors for its approval and signing the documentation required for the Annual Contributions Contract on August 31, 1972. (Plaintiff's Exhibit 22).

47. On November 8, 1972 the Authority resolved to withdraw its application to Turnkey public housing for The Project. (Plaintiff's Exhibit 33).

48. On December 4, 1972 the Board of Supervisors resolved to concur in the resolution of the Authority withdrawing its application for The Project and it

further resolved that the "Board of Supervisors reject the aforesaid application solely on the basis of site. . ." (Plaintiff's Exhibit 38).

49. The action of the Housing Authority of November 8, and of the Board of Supervisors on December 4, 1972, arose out of opposition by certain citizens of Yuma, Arizona to the placing of a low-rent federal housing project on the sites proposed for The Project. (Plaintiff's Exhibit 16, 45 and 46).

50. There were no black or brown persons among the Yuma group which expressed opposition to the sites for The Project.

51. The rejection of The Project was not based on site only, as expressed by the Board of Supervisors, but was an illegal and discriminatory act arising out of opposition on the part of certain Yuma citizens to having a low-rent federally subsidized housing project to be occupied by persons qualified for federal housing subsidies, including black or brown persons in the City of Yuma. (Plaintiff's Exhibit 16, 45 and 46).

52. The Board of Supervisors intended by its December 4, 1972, resolution to reject the Turnkey project regardless of where it was to be located in the City or County of Yuma, Arizona.

53. The County breached and repudiated said contract (Plaintiff's Exhibit 9) by the Authority's resolution of November 8, 1972, (Plaintiff's Exhibit 33) and the County's resolution of December 4, 1972. (Plaintiff's Exhibit 38).

54. On November 10, 1972 the Authority wrote Urbatec, informing Urbatec of its November 8, 1972 resolution to withdraw its application for 120 units of low-rent

housing to be developed by the Turnkey method and further stated: "Any action taken by your firm in connection with the development of the referenced project is done at your own risk." (Plaintiff's Exhibit 37).

55. From June 1, 1972 until on or about November 10, 1972, Urbatec diligently performed everything on its part to be performed on The Project, relying on the County's promises contained in the approval letter of June 14, 1976 [sic]. (Plaintiff's Exhibit 9).

56. On or about November 10, 1972, Urbatec ceased all efforts toward the development of The Project upon its learning of the Housing Authority's resolution to withdraw its application for The Project, thus mitigating damages.

57. As of December 4, 1972 when the Board of Supervisors rejected The Turnkey Project, there was pending before the City Planning and Zoning Commission of the City of Yuma an application for the re-zoning of the site in the City of Yuma on which Urbatec proposed to place 27 units of low-rent Turnkey Housing for The Project.

58. The County of Yuma failed and refused to execute the requisite documents relating to the annual contributions contract as a direct and proximate result of which no federal funds would be available to purchase The Project, i.e. for the County to perform its promises contained in the June 14, 1972 approval letter. (Plaintiff's Exhibit 9).

59. At no time did Urbatec commence construction of the project or move construction equipment onto the sites of The Project.

60. As of December 4, 1972 Urbatec was

not licensed as a building contractor in Arizona (Pre-Trial Order Agreed Fact No. 19).

61. On December 4, 1972 Urbatec had not qualified as a foreign corporation doing business in Arizona (Pre-Trial Order Agreed Fact No. 18).

62. From May 31 through on or about November 10, 1972, Urbatec pursued only the development and completion of The Project and declined to pursue other proposals and invitations for any other housing projects, subsidized or otherwise.

63. Between May 31, 1972 and November 10, 1972, specific opportunities for subsidized housing projects were presented to and available to Urbatec.

64. Urbatec through its general contractor, had studied closely the cost factors involved in the construction of the proposed project during its pendency in 1972.

65. Costs as proposed by Urbatec were within the HUD cost parameters for the area of Yuma, Arizona in 1972. (Plaintiff's Exhibit 47).

66. Urbatec's projected profit based on its cost studies and HUD's parameters for construction of The Project was $277,400.00.

67. From June 1, 1972 through November 10, 1972 Urbatec rendered the following services having the following reasonable value to the County of Yuma.

(a) Plans and specifications for the subject project were valued at $64,250, were 80% completed as of November 10, 1972, thus, having a value of $51,400 (Plaintiff's Exhibit 5), and

(b) A completed developer's package consisting of sites, design, plans and

specifications which met both the Authority's and HUD's requirements, having a value of $75,000. (Plaintiff's Exhibit 5).

68. Plaintiff was damaged as follows as the direct and proximate result of the County's said breach of contract and lost profits on construction: $75,000 for developers's [sic] fee and overhead allowance, $51,400 for plans and specifications to the point of completion by plaintiff, $55,366 out of pocket expenses to plaintiff.

69. Urbatec incurred the following costs between June 1, 1972, and on or about November 10, 1972:

(a) $14,000 for attorney fees for zoning, Urbatec office in Yuma, travel, lodging and food of Urbatec personnel in Yuma, a secretary in Yuma, a trailer in Yuma, and for telephone.

(b) $13,333 for John MacLaurin, Urbatec's general contractor working full-time on The Project during said period.

(c) $13,333 for Young Woo, Urbatec's architect, working full time on The Project during said period.

(d) $4,444 for Urbatec's president and general counsel, Barton L. Schuman, spending one-third of his time on The Project during said period.

(e) $3,033 for Urbatec's construction and field superintendent, Joe Breazeale, who spent two months in Yuma devoting full time toward The Project during said period.

(f) $290 for an automobile for Joe Breazeale during said two-month period.

(g) $4,800 for its secretary in its Los Angeles office and $2,133 for its rent in its Los Angeles office during

said period.

In the event the foregoing findings of fact should be more appropriately conclusions of law, they will be so interpreted.

CONCLUSIONS OF LAW

1. Jurisdiction is vested in this Court by virtue of diversity of citizenship in that plaintiff is a California corporation, that defendant County of Yuma is a political sudivision of Arizona and that the individual named defendants are residents of the State of Arizona. In addition, the claim sought by plaintiff exceeds the sum of $10,000. (See 28 U.S.C.A. §§ 1332 and 1441.)

2. At all times relevant to the subject litigation, the Housing Authority of the County of Yuma was the duly authorized agent of the County for the construction, maintenance, operation and management of housing projects in Yuma County. (Plaintiff's Exhibit 1.)

3. By virtue of the County's Resolutions of May 2, 1955, (Plaintiff's Exhibit 1) and May 1, 1972 (Plaintiff's Exhibit 4) the County duly authorized The Authority to do all things reasonable and necessary to secure from HUD a contract or contracts for loans and annual contributions for The Project and to develop and administer The Project.

4. The Authority and Charlene Maloney, as its Executive Director, were acting within the scope of said agency and authority as to all the acts they performed to develop The Project from May 1, 1972, until November 8, 1972, (when The Authority resolved to cancel The Project) including but not limited to the following acts:

(a) Selecting Urbatec's proposal

from among the five proposals submitted. (Plaintiff's Exhibit 6).

(b) Executing the June 14, 1972, approval letter to Urbatec. (Plaintiff's Exhibit 9).

(c) Coordinating the planning and development tasks on The Project to be performed by The Authority, the County, HUD and Urbatec.

(d) Participating in the approval of design factors and specifications with HUD throughout said period and at the conferences of June 22, September 20 and September 21, 1972. (Plaintiff's Exhibit 14 and 25).

(e) Instructing Urbatec on November 2, 1972, to prepare final plans and specifications for The Project. (Plaintiff's Exhibit 30).

(f) Forwarding to The County Board of Supervisors for its approval and signing the documentation required for the Annual Contributions Contract on August 31, 1972. (Plaintiff's Exhibit 22).

5. The County, through its Board of Supervisors, ratified the selection of Urbatec's proposals, its sites, and costs when it adopted and executed the Cooperation Agreement with the City of Yuma after having full knowledge of the Authority's selection of Urbatec's proposal, its sites, and its costs. (Plaintiff's Exhibits 10 and 11).

6. The Authority's tentative approval letter of June 14, 1972 (Plaintiff's Exhibit 9) constitutes a contract between the County and Urbatec.

7. Said contract contained certain conditions that were understood by all parties to be the following:

(a) Approval by HUD of the land

cost.

(b) Approval by HUD and the Authority of project design and Urbatec's meeting HUD requirements on The Project.

(c) The scheduling of remaining stages for the development of The Project. (Plaintiff's Exhibit 9).

8. Urbatec satisfied all the conditions required by the June 14, 1972 approval agreement. (Plaintiff's Exhibit 9, 32, 14, 25, 28 and 29).

9. The fact that the parties to the June 14, 1976 [sic] approval letter agreed to the entering into two subsequent agreements does not mean the June 14, 1972 approval letter was not a contract in that: (a) all material terms (including the requirement that Urbatec must comply with all HUD requirements for The Project) were set forth in the June 14, 1972 approval letter and (b) all the terms of the subsequent agreements for the parties, i.e. the Letter of Intent and Contract of Sale were already known by the parties by virtue of said agreements being expressly set forth in one of the HUD regulatory handbooks entitled HUD Low-Rent Handbook, Circular 7420.1, at Appendices 10 and 12. (Plaintiff's Exhibit 9 and 5A).

10. Plaintiff Urbatec performed all terms, conditions, duties and responsibilities on its part to be performed in the development of The Project and in accordance with said contract, the June 14, 1972 approval letter. (Plaintiff's Exhibit 9).

11. The County's promises in the June 14, 1972 approval letter (Plaintiff's Exhibit 9) were such that the County should have reasonably expected them to induce action of a definite and

substantial character on the part of Urbatec and did in fact induce such action and thus said promises are binding in that injustice can be avoided only by the enforcement thereof.

12. The County breached and repudiated said contract (Plaintiff's Exhibit 9) by the Authority's resolution of November 8, 1972, (Plaintiff's Exhibit 33) and the County's resolution of December 4, 1972. (Plaintiff's Exhibit 38).

13. The repudiation of said June 14, 1972, agreement arose out of opposition on the part of certain Yuma citizens to having a low-rent federally subsidized housing project to be occupied by persons qualified for federal housing subsidies, including black and brown persons, in the City of Yuma, and as such was discriminatory and illegal.

14. Nothing in federal statute or Arizona law allows a County, having validly declared a need for federal assistance for low-rent housing and having executed a Cooperation Agreement and tentative approval letter (Plaintiff's Exhibits 9 and 5A, Appendix 4) to thereafter cancel the agreements and withdraw from the program. (See Cuyahoga Metropolitan Housing Authority v. Harmody, (1973 6th Cir) 474 F.2d 11022.

15. Once a County brings into operation a housing authority and approves a project and enters into a cooperation agreement and tentative approval letter, there is nothing left to be done by either contracting party except to perform administratively whatever is necessary to carry the agreements into effect. (Cuyahoga, supra.)

16. Plaintiff was damaged as follows

as the direct and proximate result of the County's said breach of contract: loss of profits on construction; $75,000 for developer's fee and overhead allowance; $51,400 for the plans and specifications created by plaintiff for The Project, and $55,366 for out of pocket expenses.

17. Inasmuch as the construction of The Project was never undertaken, it is difficult to assess the amount of damages for loss of profit had The Project been completed. It would appear that any calculation attempted would be speculative in nature. It would be reasonable to conclude, however, that a conservative estimate of the damage to plaintiff as a result of its being deprived of the opportunity to earn a profit under the contract would be conservatively estimated at $75,000.

18. Plaintiff properly mitigated its damages in that it immediately ceased work on The Project on or about November 10, 1972, when it learned of the Authority's action of November 8, 1972.

19. Plaintiff was not required to be qualified as a foreign corporation doing business in Arizona at any time up to and including December 4, 1972, because plaintiff's efforts consisted of the execution of a single contract and the planning and designing of The Project; it had not progressed to a stage of construction in Arizona.

20. That plaintiff was not required to have an Arizona building contractor's license at any time up to and including December 4, 1972, because plaintiff had not commenced construction as of said date.

21. The individual commissioners of The Authority did not exceed their legal

authority in regard to The Project at any time it was being developed, i.e. from May 1, 1972 - November 7, 1972.

22. Plaintiff is entitled to judgment against the County of Yuma in the amount of $256,766.

23. Defendants D. H. Trigg, F. A. Delaughter, Gordon V. Donaldson and Walter R. Johnson are not personally liable to plaintiff.

24. In the event the foregoing conclusions of law should be more appropriately interpreted as findings of fact, they shall be so interpreted.

DATED this 12th day of July, 1976.

/s/Walter E. Craig
United States District Judge

FILED
Jun 13 1120 AM '76

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

URBATEC, a California corporation,

Plaintiff,

v.

YUMA COUNTY, an Arizona County; D. H. TRIGG, F. A. DELAUGHTER, GORDON D. DONALDSON and WALTER R. JOHNSON,

Defendants.

CIV. NO. 73-159 PHX (WEC)

J U D G M E N T

Pursuant to the foregoing findings of fact and conclusions of law filed simultaneously herewith,

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff shall have judgment against the defendant, County of Yuma in the principal amount of $256,766, with interest thereon as provided by law from the date of this judgment until paid, together with its costs of suit herein, as provided by law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as to Count II, judgment is hereby entered for defendants D. H. Trigg, F. A. Delaughter, Gordon D. Donaldson and Walter R. Johnson against plaintiff, each party to bear his or its costs as related thereto.

DATED this 12th day of July, 1976.

/s/Walter E. Craig
United States District Judge